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New Zealand Petroleum and Minerals

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Feedback on Petroleum Programme update

Introduction

This document constitutes our feedback on the proposed updates to the Petroleum Programme ('the Programme').

Key messages

1. We thank NZP&M for the long overdue updating of the Programme. There have been significant amendments to the Crown Minerals Act 1991 ('the CMA') since the 2013 Programme was published. We appreciate the effort to modernise the Programme.

2. The Programme does not provide sufficient explanation in new chapter 13 on how the decommissioning provisions will be operationalised.

3. On the basis that some of the amendments to the CMA have not yet been, or will require, regulations to operationalise the amendment, we provide our feedback in the spirit of the intent of the amendments. However, we reserve the right to amend our views as regulations are introduced.

Feedback

We provide our feedback on a chapter-by-chapter basis to aid the interpretation. For clarity, we refer to parts of the Programme as "clauses" and parts of the CMA as "sections". In this feedback we confine our feedback to the provisions in the CMA.

Chapter 13 appears incomplete. We are aware of potential changes to the decommissioning provisions in the CMA, some of which are before the House as an amendment Bill to the CMA, which is currently paused at third reading. We also note the

absence of regulations and the guidance on financial security arrangements and financial capability assessments which are also being circulated for feedback.

Care needs to be taken to ensure that guidelines are not considered a second programme

With the novelty of the decommissioning provisions introduced through a series of amendments since 2021, it is difficult to separate the Programme from the guidance. We recognise that guidance is provided on an information only basis, and that these guidelines should not be relied on by permit and license holders.

However, as the guidelines provide information on how the Minister is likely to operationalise key provisions in the Act, it is important guidelines should not set any expectations on how these provisions will be interpreted. We provide our feedback on these guidelines separately.

We provide our feedback by Programme chapter, focusing largely on changes or updates to the Programme.

Chapter 1: About this Programme

Clause 1.1(3)

It would be helpful to include a footnote detailing the purpose of any guidelines as distinct from the purpose of the Programme. Specifically, that guidelines are provided for information and illustrative purposes only to help inform permit and license holders and should not be relied upon (legislation always prevails).

Clause 1.5 Application of this Programme

We have concerns with the retrospective application of this programme to all existing permits and existing privileges for petroleum. This is a blanket change from the 2013 Programme and may be knowingly inconsistent with how different versions of the Crown Minerals or Petroleum Act might be applied to existing permits and licenses.

We believe this needs further clarification - for example it might be helpful to signal that the new Chapter 13 applies retrospectively, regardless of the prevailing legislation.

Chapter 2: Regard to the principles of the Treaty | te Tiriti

Clause 2.2 Relationship between permit holders and iwi and hapū

General comment – the Programme makes no distinction between consultation and engagement. This is an important distinction in setting the expectations of what the outcomes may be for both permit holders and the Crown. This distinction may have a bearing on the consideration of feedback from iwi and hapū in clause 5.7. We

recommend this distinction be clarified for the benefit of better consultation and engagement.

Clause 2.2(1) should read "*the Crown has set some expectations for permit holders to report **annually** on their engagement with iwi and hapū".* Annual reporting is a legislative requirement, and this should be reflected here.

It is not clear what is meant by *"…directly affected by the permit…"* in section 2.2(2)(a). It would be helpful to refer, perhaps in a footnote, to the flow on effects of different permit activities. For example, a marine seismic survey might have broader interest than for an onshore seismic survey.

Clause 2.2(2)(a) refers the reader to clauses 2.3(2) and 2.3(4) in respect of how permit holders may "*engage with those iwi or hapū in a positive and constructive manner*". However, those clauses are in relation to consultation by the Minister, and not engagement by the permit holder.

Chapter 3: Land available for petroleum prospecting, exploration and mining

We agree with the approach of publishing maps of land that is unavailable for exploration and mining purposes on the NZP&M website. This provides an opportunity to keep these maps 'live', without having to undertake a legislative change process and provides suitable pointers for the reader to find these maps.

We have no additional feedback on this Chapter.

Chapter 4: Permits: General

We have no feedback on this Chapter.

Chapter 5: Permits: Matters the Minister must consider and be satisfied about before granting a permit

Clause 5.3(5)

In respect to assessing an applicant's failure to comply with other permits or license, we are pleased to see this the 'relevant information' provisions in respect to s29A(2)(b)(iii) suitably limited to compliance records.

Clause 5.5 Complying with the requirements relating to decommissioning and post-decommissioning activities

The requirements set out in clause 5.5 are problematic for several reasons. It is unlikely an applicant will be able to provide sufficient information to demonstrate they are

'highly likely' to comply with a decommissioning obligations at the time of application, and it unclear to what extent any information provided can be relied on by the Minister.

With so much emphasis on financial security arrangements in Chapter 13, it is unusual that financial security is not a consideration for new permit applications.

We recommend the Minister also considers the financial security arrangement proposed by the applicant to ensure compliance with decommissioning obligations.

Clause 5.7 Minister's consideration of feedback from iwi or hapū

This section explains how the Minister might consider feedback from iwi and hapū but does not close the loop on whether an applicant will be given an opportunity to respond. Feedback on engagement quality is highly subjective and this an important consideration for an application.

The Programme should expand further on how the Minister will provide this feedback to the applicant.

Chapter 6: Prospecting permits

Clause 6.3 Allocation of PPPs

The criteria in clause 6.3(8) requires further clarification. We agree with the consideration in 6.3(8)(a) that the Petroleum Prospecting Permit ('PPP') should materially add to existing knowledge but question the subjective evaluation of "substantial interest" in exploring or mining set out in 6.3(8)(b).

We recommend 6.3(8)(b) clarify what the Minister would consider as substantial interest for the benefit of the applicant.

Chapter 7: Exploration permits

Clause 7.2 Allocation processes

In respect to publicly recording on the NZP&M website that an initial PEP application has been received (clause 7.2(9)), it would be helpful to clarify if the full details of the initial application, in particular the details of the staged work programme, will be public.

To be clear, our position is the details of the submitted work programme should ***not*** be made public while negotiating the conditions of a PEP with the regulator.

Also, we think this is important to indicate whether other applications (within three months (clause 7.2(10)) will be publicly recorded as they are received.

Due to the priority of assessment of an Extension of Land ('EOL') for a PMP over an application for a PEP, clause 7.2(12) should clarify if the assessment of the EOL application will occur after three months has elapsed since the public recording of the initial application, or whether this "stops the clock".

7.3 PEP Rounds

We recommend changing the wording of the first sentence of clause 7.3(1) to; "*From time to time the Minister may offer a PEP Round*." This better reflects the ad hoc nature of a PEP round going forward.

Chapter 8: Mining permits

Clause 8.11 Initiating a unit development scheme

To ensure consistency with clause 1.3(7), the wording in the last sentence of clause 8.11(1) should read;

> "*In doing so, the Minister must be satisfied that unit development is needed in order to secure the maximum* ***economic*** *recovery of the petroleum.*"

Chapter 9: Flaring, incinerating and venting

We have no feedback on this Chapter.

Chapter 10: Unconventional petroleum resources and underground gas storage

We have no feedback on this Chapter.

Chapter 11: Permits (General): Management of permits and obligations of permit holders

Clause 11.8 Iwi engagement and annual review meetings about iwi engagement reports

Clause 11.8(1) is a radical departure from established practice. Our reading of section 33C of the CMA is that a permit holder is required report on engagement with relevant iwi, not for the Crown to be prescriptive in how this engagement is undertaken. We are unable to find the enabling provisions that correspond to this statement.

If the wording of clause 11.8(1) holds, reference to the enabling provision(s) in the CMA or Regulations should be included.

Chapter 12: Changes to permits

Clause 12.4 Extension of the land area to which a permit relates

Clause 12.4(3) is ambiguously worded in respect to an EOL for the purposes of exploration. An EOL is looking to secure exclusive mineral rights in a defined area. The current wording suggests a broader interpretation of an area of land that has been released for public consultation through publication on the relevant government website. We recommend rewording clause 12.4(3) to limit this interpretation to land reserved for exploration of petroleum.

Clause 12.4(4) refers to section 28A(1A**A**) of the CMA, this should be section 28A(1A).

Clause 12.4(12) seems inconsistent with section 42A of the CMA. The wording of the relevant part of section 42A(1) is; *"...grant written authorisation to a permit holder to carry out geophysical surveys on land adjacent to the land to which the permit relates* ***if another permit is not in force*** *in relation to that adjacent land."* (emphasis added). We recommend rewording clause 12.4(12) to ensure consistency with the CMA.

Clause 12.11 Dealings

For the purposes of clarity, NZP&M should consider including a description on how dealings relate to royalty payments and the final assessment of royalties at the end of economic production will be managed. For clarity, pursuant to section 41B(1) a permit participant ***may*** enter into a dealing, but the Programme does not elaborate on how dealings relate to the final royalty assessments.

Chapter 13: Decommissioning

Overarching comments

There are several omissions from the Programme regarding the decommissioning regime, including:

1. Chapter 13 is worryingly light on the decommissioning obligations for former permit and license holders (sections 89J through 89N), we recommend including a clause in the Programme explaining the decommissioning obligations of former permit and license holders, and when they might arise; and

2. relevant older wells and infrastructure are noted in clause 13.6(2)(b) and (c) but not discussed. The Programme would benefit from an explanation of the intent of sections 89H and 89I, as this has the potential to expand the decommissioning obligations of current permit and license holders (this is important for new entrants to understand decommissioning scope). An example might be a well, drilled under the authority of an exploration permit or license that was not

plugged and abandoned, would be captured by an obligation under the subsequent mining permit or license.

Clause 13.2 Purpose of decommissioning regime

In describing the purpose of the decommissioning regime, it would be helpful for clause 13.1(1) to link to the purpose statement of the CMA. For example, section 1A(2)(c), which deals with good industry practice and the role of the CMA in providing a fair financial return to the Crown on Crown-owned minerals in section 1A(2)(d). Otherwise, this might be misinterpreted as a separate purpose statement for a subpart of the CMA.

Clause 13.6 Decommissioning obligations of current permit holders

For the purposes of clarity, clause 13.6(3), in reference to a "*decommissioning milestone*", should reference both section 89N "*When decommissioning obligations of persons under section 89J, 89K, or 89L arise*" and the issuance of a decommissioning certificate in clause 13.4(1).

Clause 13.9 Exemptions

Clause 13.9(1) should include "partial removal" or "abandon in place" as a basis for an exemption.

The Programme does not make clear the relationship, if any, between exemptions and the **scope of decommissioning**. This has important considerations for any cost estimates, as well as the type and amount required under any financial security arrangements.

In our read of this clause, it appears that the permit or license holder would seek to amend a decommissioning certificate that has been issued, on the basis of any consents that have been granted, and the conditions of those consents. It is essential the programme makes this relationship clear, particularly in respect to section 89E, which presumes complete removal.

This clause highlights the multitude of problems arising from the policy decision to bring land use considerations into the CMA.

Clause 13.12 Content of a decommissioning plan

Devoid of a requirement for determining the scope of decommissioning, which might include options such as partial removal (for example of an offshore structure) or an intent to abandon in place (for example buried onshore pipelines), clause 13.12 should be explicit the *"…planned decommissioning activities and the processes to be used to carry out those activities…"* (clause 13.12(1)(a)) are in respect to total removal as per section 89E.

This clause should also describe the requirements of when this plan is to be updated.

Clause 13.13 Content of decommissioning cost estimate

We recommend including an expectation that a decommissioning cost estimate should be consistent with the content of the asset register in terms of scope and the activities described in the decommissioning plan.

Clause 13.14 Content of asset register

Update clause 13.14(1)(a) to include *"all relevant older petroleum infrastructure and wells*" for consistency with clause 13.6(2)(b) and (c).

We also recommend switching the order of clauses 13.13 and 13.14 to reflect the hierarchy of information provided. By this we mean the decommissioning cost estimate is informed by both the asset register and the decommissioning plan.

Clause 13.18 Process for how the Minister will carry out a financial capability assessment

This clause refers only to the permit holder. No distinction is made between the permit holder and permit participants. This is relevant for the description of 13.18(4) as it implies the Minister is forming an aggregate view of the financial capability of the permit holder as a collective. We note the absence of regulations may be an issue here.

Footnote 81, which provides an explanation of the PHIA "*probability yardstick*", should also note that this yardstick was developed to ensure the consistent interpretation of information **between** intelligence agencies, but has been **adapted** for other uses.

Clause 13.24 Minister's power to alter one or more elements of a financial security arrangement

The criteria set out in clause 13.2(3) are all reactive factors to a changing circumstance of the permit holder (or participants). There are no proactive factors listed, such as a review of financial security arrangements by the Minister on receipt of an update asset register, decommissioning plan, or (and most importantly) an updated decommissioning cost estimate. It is important to be consistent with clause 13.20, where the Minister *"…may, and ordinarily will, monitor permit holders on an ongoing basis*". This presumes proactive management of the petroleum sector.

Clause 13.28 When the Minister does not need to call on a security

We recommend expanding the explanation of "*unless there is any further need for the security*" by providing an example of a further need. One example discussed was the

case where a financial security arrangement collectively covered a **permit participants** obligations across multiple permits or licenses.

Concluding comments

Updating the Petroleum Programme is a serious undertaking, particularly with the number of amendments and changing role of the regulator. We commend and thank NZP&M for their attention to this important document, and the opportunity to provide feedback.

Should any of our comments require clarification please do not hesitate to contact us.